

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Spanish Fort Post Office
Spanish Fort, AL 36527

Docket No. A2021-1

**UNITED STATES POSTAL SERVICE ANSWER IN OPPOSITION TO
PETITIONER'S APPLICATION FOR SUSPENSION OF DETERMINATION FOR
THE SPANISH FORT COMMUNITY POST OFFICE, SPANISH FORT,
ALABAMA 36527
(January 7, 2021)**

On December 28, 2020, the City of Spanish Fort, Alabama (Petitioner) through David J. Connor, City Attorney, filed an Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office (Petitioner's Application).¹ In its Application, Petitioner requests that the Postal Regulatory Commission (Commission) suspend the United States Postal Service's (Postal Service) determination not to extend (for a fourth time) its contract with the supplier of the Spanish Fort Community Post Office, a type of contractor-operated retail facility, located in Spanish Fort, Alabama. By means of Order No. 5793, the Commission docketed correspondence from the Petitioner, assigning PRC Docket No. A2021-1 as an appeal pursuant to 39 U.S.C. § 404(d). This matter concerns the expiration of a temporary (emergency) contract, established for the maintenance of the Spanish Fort Community Post Office (CPO); the Postal Service extended this contract three times in an attempt to find a suitable replacement supplier, but received no bids with acceptable

¹ Application for Suspension of the Determination of the Postal Service to Close the Spanish Fort Post Office, December 28, 2020; *see also* In the Matter of Spanish Fort, Alabama 36527 / Appeal of Postal Service Determination to Close Spanish Fort Post Office, December 28, 2020; Participant Statement, December 28, 2020.

terms. As explained below, the discontinuance of this contractor operated retail unit will not adversely affect the level of service currently provided to the Spanish Fort Community. For this and other reasons, the Petitioners' Application should be denied.

Petitioner's appeal and corresponding Application does not fall within the scope of the Commission's jurisdiction under 39 U.S.C. § 404(d)(5), because the appeal requests the Commission to review a contract administration decision concerning the operation of a contractor-operated retail facility (*i.e.*, a CPO). Section 404(d) does not apply to the Postal Service's management of its contracts, or to the operation of a retail facility whose existence derives solely from the terms and conditions of a voluntary contract. Accordingly, issues related to the administration of a services contract for the Spanish Fort CPO, including whether the Postal Service should continue its contract for operation of this facility, do not fall within the Commission's 39 U.S.C. § 404(d)(5) jurisdiction.

The "sole source" test, which the Commission has adopted in recent appeals of the Postal Service's decisions to terminate contracts governing the operation of contractor-operated facilities, further supports Postal Service's position regarding the applicability of section 404(d) procedures to the Spanish Fort CPO.² Customers of the Spanish Fort CPO will be served by the Daphne Post Office, which is located at a driving distance of 4.8 miles from the Spanish Fort CPO; this is closer than the availability of the nearest post office in recent a

² The Postal Service does not concede that the Commission's "sole source" test is a proper interpretation of section 404(d). That said, solely for purposes of argument, and without waiver of its prerogative to challenge the Commission's "sole source" test, the Postal Service submits that its application here further buttresses the Postal Service's position that section 404(d) procedures do not apply to its decision to terminate the CPO.

case adjudicating similar facts.³ Additionally, the Postal Service will relocate Post Office Box service from the Spanish Fort CPO to the Daphne Post Office without interrupted service, and it will refund customers of the Spanish Fort CPO for the time remaining on their Post Office Boxes. Moreover, customers of the Spanish Fort CPO will continue to receive rural carrier service; they will also enjoy access to the postal services provided by usps.com and alternative stamp purchasing options offered by many retail businesses in the area.

Finally, the Postal Service observes that the procedures imposed by 39 U.S.C. § 404(d) do not comport with the requirements of contract management, negotiation, and implementation. In many situations, applying the section 404(d) procedures to CPO contract decisions would provide contractors with a bargaining advantage over the Postal Service, and force the agency to continue operating a contract, or enter a new contract, even where sound business judgment would clearly suggest otherwise. This imbalance in bargaining power would arise most acutely where a CPO operator is the only person in the community willing to operate the CPO; such, in fact, is the case in Spanish Fort.

Petitioner's appeal is therefore not within the scope of the Commission's jurisdiction under 39 USC § 404(d). Petitioner fails to allege facts that constitute a condition precedent to any jurisdiction of the Commission under section 404. 39 U.S.C. § 404(d)(5). Accordingly, the relief requested by the Petitioner is not, as a matter of law, available to Petitioner and should be denied. The Postal Service also responds to these matters in greater detail in its Motion to Dismiss

³ See PRC Order No. 2505, Order Dismissing Appeal, PRC Docket No. A2015-2 (May 27, 2015) (where the nearest Post Office to a CPO slated for discontinuance was located at approximately 7 miles away).

Proceedings filed concurrently with this Response, and it incorporates by reference the arguments therein.

For the reasons set forth above, the Postal Service requests that the Commission deny the Petitioner's Application.

Respectfully submitted,

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